

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE: STRYKER LFIT V40 FEMORAL
HEAD PRODUCTS LIABILITY
LITIGATION

MDL No. 17-md-2768-IT

This Document Relates To:

All Cases

PLAINTIFFS' AGREED NOMINATION FOR LEADERSHIP STRUCTURE

Per MDL Order No. 9 in the above-captioned matter, the undersigned attorneys hereby submit Plaintiffs' Agreed Nomination for Leadership Structure. Each of the nominees listed below are counsel of record in one or more of the coordinated actions with a notice of appearance filed on the master MDL Docket. Furthermore, each of the nominees below exceeds and exemplifies the stated selection criteria: (1) the willingness and ability to commit to a time-consuming process; (2) a commitment to the fair representation of the interests of the Plaintiffs in the coordinated actions; (3) the ability to work cooperatively with others; (4) professional experience with this type of litigation; and (5) access to sufficient resources to advance the litigation in a timely manner.

Nominations

Plaintiffs' Agreed Nomination for Leadership Structure comprises a proposed slate of attorneys who, collectively, represent the substantial majority of Stryker LFIT V40 cases currently filed in this litigation. Furthermore, this slate of nominees has already demonstrated,

and will continue to demonstrate, the level of commitment and experience necessary to excel in their respective roles. Each nominee's credentials will be fully detailed in the forthcoming leadership application. The agreed-upon leadership nominations and positions are as follows:

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Selection Criteria and Analysis

The attorneys proposed herein have a wealth of relevant experience and knowledge of the underlying claims in this MDL. Each nominee has direct and extensive experience in defective total hip replacement mass tort litigation. Nominees include counsel who have acted as lead counsel, liaison counsel, executive committee or steering committee members in other hip replacement multidistrict litigations and a host of other complex medical device litigations. By appointing counsel with such credentials and backgrounds, both Stryker and the Court will find that the experience of Plaintiffs' counsel is an asset in managing this complex litigation.

This Court set forth 5 selection criteria in MDL Order No. 9. All of the attorneys involved in the nomination process carefully considered each of these criteria in selecting nominees for this Plaintiffs' Agreed Nomination for Leadership Structure. These criteria, along with other relevant factors considered in the nomination process, are outlined below:

1) Willingness and Ability to Commit to A Time-Consuming Process

The attorneys and firms who have already demonstrated commitment to this litigation before the case was transferred to this Court are those with the greatest interest and those who have committed to this litigation. Each nominee is experienced in litigation of this scale, and is fully aware and accepting of the extensive time commitments required for their respective positions. Appointing the nominated attorneys will maintain continuity and serve to advance the goal of efficiency by avoiding a steep learning curve. It will also enhance strategic coherence in the litigation and promote coordination with the state courts.

2) A Commitment to the Fair Representation of the Interests of the Plaintiffs in the Coordinated Actions

Prospective members of the PEC/PSC in any MDL litigation must always guide their actions with the knowledge that they represent all plaintiffs in all of the coordinated actions associated with the MDL. This proposed leadership slate includes members who have served in leadership roles in some of the most successful hip implant cases to date. For example, members of this leadership slate were directly involved in the negotiation and resolution of cases involving participation rates at or above 95% (Stryker Rejuvenate and ABG II), 94% (DePuy ASR), and 95% (Wright Medical Technology). These outcomes demonstrate the commitment of the nominees above to fairly represent the interests of all Plaintiffs in the litigation, and each nominee pledges to continue that commitment in this litigation.

3) The Ability to Work Cooperatively with Others

In considering the nominees for this criterion, the analysis focused on three factors. First, the nominees were evaluated on the basis of whether they could work cooperatively among each other. The formulation of this Agreed Nomination and the progress of the litigation to this point is evidence of this slate's ability to work well together. Second, working well with others would include the ability to work well with opposing counsel and other interested counsel. This slate has consistently demonstrated that they have been able to cooperate with other attorneys (including Defense Counsel in this litigation) to advance the interests of all parties. Finally, the ability to work well with others also includes the ability to cooperate with counsel in parallel state court actions. The nominees in this slate already have cooperated with parallel state court litigation pending in Massachusetts, Florida, and New Jersey, and further pledge to continue this cooperation.

4) Professional Experience with this Type of Litigation

When evaluating requirements for the PEC/PSC members, one can hardly dispute that an attorney or law firm must have had substantial involvement in the inner workings of medical device mass tort litigation in order to effectively serve as a leader of one. Each decision required of the PEC/PSC at every stage of this litigation will affect the next, and must be thoroughly contemplated with an eye to the expected outcomes and repercussions it will bring. The nominated attorneys bring ample relevant and practical experience to this MDL as each nominee will outline in their respective CV as part of the application process.

5) Access to Sufficient Resources to Advance the Litigation in a Timely Manner

In determining whether the nominees had access to sufficient resources to advance the litigation in a timely manner, this group carefully weighed three factors. The first factor is whether the nominees and their respective firms have access to the necessary financial resources to sustain a substantial financial burden. It can be estimated that this litigation will cost no small sum, and will require continuous financial support from all PEC/PSC members, both in cash contributions and held costs. All nominated counsel and sponsoring firms are committed to allocating whatever resources are necessary to see this MDL through to a successful resolution. The second factor is whether the nominees and their respective firms have sufficient human resources to commit to the substantial level of work necessary in litigation of this scale. Each nominee and their respective firm has repeatedly demonstrated their ability to meet and exceed the workforce demands necessary in MDL litigation, and commits to continue in this MDL. Finally, each nominee was evaluated on the basis of whether they had other commitments which would hinder their ability to devote the time and effort necessary to succeed as leaders of this

litigation. Each of the nominees represent that they have the time and resources to commit to this case aside from their responsibilities in other cases.

Additional Criteria and Analysis

1) Number of Known and Represented Clients from Each Firm

The number of clients a firm has (whether under investigation or filed) is a highly relevant factor. Ultimately, lawyers with the most clients likely have the most at stake, and therefore have a significant interest in ensuring a fair and successful outcome for the litigation as a whole. The nominated attorneys represent a substantial majority of the Plaintiffs who have cases pending in both the state and federal courts. They have a substantial stake in the litigation.

2) Interest in the Litigation to Perform Meaningful Work

While the numbers of known and represented clients is an important factor in determining which attorneys and law firms have the greatest stake in the litigation (as noted above), another important quality to consider is whether those attorneys show a genuine impassioned interest in the litigation as a whole. Those with less than a fiery interest in doing the work necessary to ensure the success of the litigation should not be allowed to lead it. Therefore, in terms of personal case-load and vested interest, it is not only size that matters, but the quality of commitment to fighting for the clients of all involved instead of finding a way out when the going gets tough. The nominated attorneys have demonstrated this commitment well before the formation of the MDL and will continue as a cohesive group, if appointed by this Court.

3) Unique or Special Talent that would Benefit this Litigation

As in any group setting, a team is only as powerful as its component parts. One can rely on that axiomatic principle in concluding that if every member has the same strengths and weaknesses, then the whole will ultimately be weaker. In that way, successful organizational

structure contains attorneys and firms who are talented in many different areas of knowledge and practice, including medical science, depositions, technology, legal and medical research, brief and legal writing, epidemiology, pharmacology, regulatory and marketing issues, organization, expert reports, Daubert motions, and other areas. Each of the nominated attorneys and sponsoring firms, has a unique quality or area of expertise to bring to the table in order to make this leadership slate as well-rounded and strong as possible.

Additionally, Counsel recognize the benefits of appointing counsel who demonstrate “diversity in experience, skills and backgrounds”. Duke Law Ctr. For Judicial Studies, Standards And Best Practices For Large And Mass-Tort Mdls (Executive Summary), at P. 4, 3C (2014). In seeking out nominations, Counsel has promoted a diverse team in terms of firm size, experience, gender, sexual orientation and backgrounds. A diverse group of leaders better represents the diversity of our clients which allows us to better represent those injured.

4) Commitment to Excellent Work in this Case

A PEC/PSC sets the tone for the level of devotion and work product of everyone involved, from the members of the subcommittees to those serving peripheral roles. Therefore, it is absolutely imperative that every member of the PEC/PSC be completely bound to the goal of producing the finest—and nothing short of excellent—work in every aspect of this case in order to properly serve and represent the clients. The undersigned attorneys represent with utmost certainty that each and every one of the nominated attorneys and respective law firms in this proposed PEC/PSC have pledged themselves and their resources to doing just that.

5) Reputation of the Lawyer and Sponsoring Law Firm on a National Level

A PEC/PSC essentially acts as one collaborative law firm prosecuting a general case in many ways on behalf of all lawyers and all individual plaintiffs against a large corporation

defended by some of the most skilled law firms. To this end, one must ensure that the PEC/PSC, its members, and their respective firms adhere to the highest levels of ethical standards both in their dealings on this case and in any matters that could potentially come to bear or reflect on this PEC/PSC, and therefore reflect on this litigation and this Court. Thus, the PEC/PCSC attorneys must not only have demonstrated the highest ethical standards but must have the appearance of the same. The nominated attorneys comprising the proposed leadership slate for this MDL meet this requirement.

Conclusion

In light of the above factors and reasoning, and after much careful thought and consideration, the undersigned counsel hereby respectfully request that this Court accept the foregoing nominations in this litigation, and upon review of the forthcoming leadership application, enter an Order appointing this leadership slate to the respective positions indicated above.

Dated: June 16, 2017

Respectfully submitted,

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